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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing
Filing Date: August 8, 2021

Case No.: PSH-21-0112

Issued: December 27, 2021

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The Individual submitted an Incident Report to the Local Security Office (LSO) in August 2020, regarding a physical altercation he had with his son. Ex. 6. As a result, the LSO provided the Individual with a Letter of Interrogatory (LOI), which he completed in February 2021. Ex. 8 at 6–12. He later underwent a psychological evaluation by a DOE consultant psychologist (DOE Psychologist) in April 2021. Ex. 9.

Due to unresolved security concerns, the LSO informed the Individual, in a letter dated July 9, 2021 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns or SCC), the LSO explained that the derogatory information

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

raised security concerns under Guideline I (Psychological Conditions) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted twelve numbered exhibits (Ex. 1–12) into the record and presented the testimony of the DOE psychologist at the hearing. The Individual submitted 23 exhibits (Ex. A through W) into the record, and presented the testimony of four witnesses, including his own.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as a basis for suspending the Individual’s security clearance. Ex. 1 at 1. Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. *Id.* A condition that could raise a security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]” *Id.* at ¶ 28(b). In citing Guideline I, the LSO relied upon the DOE Psychologist’s conclusion that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for Posttraumatic Stress Disorder (PTSD), and that this condition impairs his judgment, stability, and reliability. Ex. 1 at 1. The above information justifies the LSO’s invocation of Guideline I.

The LSO also cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as a basis for suspending the Individual’s security clearance. Ex. 1 at 1–2. Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. *Id.* In citing Guideline J, the LSO relied upon the following information: State and local police departments initiated an investigation of the Individual for Abuse of a Child-Intentional and Interference with Communications, after the Individual engaged in a physical altercation with his son. The altercation resulted in his son needing medical attention for a separated shoulder and torn rotator cuff. Subsequently, his case was referred for investigation by a local Children, Youth, and Families Department (CYFD), which substantiated the allegations of excessive physical discipline. The LSO further cited that on August 3, 2020, an Order of Protection (restraining order) was filed against the Individual after he engaged in the physical altercation with his son; and on December 28, 2015, the Individual’s then-wife filed an Order of Protection against him for allegations of a history of physical, mental, and verbal abuse against her and their children. The above information adequately justifies the LSO’s invocation of Guideline J.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and

security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In the LOI, the Individual stated that his 13-year-old son (son) suffers from Oppositional Defiant Disorder (ODD), a behavioral disorder characterized by a persistent pattern of hostile, vindictive, and defiant behavior toward authority figures. Ex. 8 at 9.² He further stated that his son has displayed violent behaviors at school and at home, including a prior threat of assault towards the Individual’s wife. *Id.*

The Individual asserted that the July 27, 2020, physical altercation began when his son became very contentious and threatening towards his current wife. *Id.* The Individual stated that he tried to intervene and separate his son from his wife. *Id.* His son then began kicking and punching him, and the Individual tried to restrain him by grabbing his arms, but the son continued to assault him, so he twisted one of his son’s arms behind his back to get him to stop the physical altercation. *Id.* at 9–10. His son’s mother picked him up from the Individual’s house and took the son to the hospital where he was found to have a slight shoulder separation.³ *Id.* at 10. The Individual stated his son’s mother later called the local CYFD and filed a restraining order against him. *Id.* at 10.

² As evidence of his son’s behaviors, the Individual submitted an email to his ex-wife regarding meetings with his son’s teachers on October 24, 2019, because the son had pushed another student causing him to hit his head, and because he is disruptive in class and requires his teacher to intervene. Ex. V. He also submitted the following: an email from his son’s P.E. teacher stating he sent the son to the principal and discipline officer for using vulgar language in class and refusing to stop this behavior; a treatment note from his son’s therapist reflecting that the son hits and kicks family members; and a treatment note from his son’s medical treatment provider reflecting the son’s uncooperative behavior towards his medical provider during his appointment. Ex. T; Ex. Q; Ex. S.

³ The son’s mother is the Individual’s ex-wife, and they share custody of two children. Ex. 8 at 9.

He further stated that the police conducted an investigation, but he was not charged or arrested. The Individual asserted that he had attached a copy of the police report with his LOI.⁴ *Id.*

In the LOI, the Individual stated that the CYFD's findings of excessive physical discipline were based on his son's documented shoulder injury and the Individual's admission that a physical altercation had occurred. *Id.* The Individual asserted that he completed all CYFD requirements to resolve the incident, including completion of parenting classes and therapy sessions. *Id.* at 10–11. In this regard, the Individual has submitted evidence regarding his CYFD-mandated requirements including a court order, case plan recommendations, a certificate of completion of a parenting course, and letters from his former therapist and his current therapist (Therapist) verifying his compliance with psychotherapy and treatment. Exs. A-I; Ex. N; Ex. O; Ex. W. He also submitted a case closure letter dated December 18, 2020, signed by a CYFD supervisor stating that the Individual's case was closed because he had successfully completed all CYFD requirements. Ex. P.

In April 2021, the Individual underwent a psychological evaluation by the DOE Psychologist, including a clinical interview. Ex.9. In her report (Report), the DOE Psychologist noted that various mental health providers had diagnosed the Individual with several psychological illnesses: Adjustment Disorder with Mixed Anxiety and Depressed Mood; Major Depressive Disorder (MDD), Recurrent, Severe; and PTSD. During her examination, the DOE Psychologist concurred with the PTSD diagnosis and concluded that the Individual's PTSD remains untreated. *Id.* at 10. The Individual reported that he had experienced severe physical abuse from his father and had witnessed domestic violence incidents from his father towards his mother "thousands of times." *Id.* at 9. The Individual also acknowledged PTSD symptoms including flashbacks, nightmares, hypervigilance, intrusive thoughts, and negative emotions. *Id.*

During the evaluation the Individual reported that he is taking prescribed antidepressant medication and no longer suffers from symptoms of depression. *Id.* The Report noted that the DOE Psychologist verified with the Individual's former treating therapist that she had provided individual and family therapy for the Individual from October 2018 through February 2021. *Id.* at 6. The former therapist stated she was somewhat disappointed in the physical altercation between the Individual and his son as the Individual had not been able to follow the plan they had discussed in therapy regarding how to work on emotional regulation and disengage with his son. *Id.* Since the Individual was diagnosed with PTSD, the former therapist referred him to obtain Eye Movement Desensitization and Reprocessing (EMDR) therapy. *Id.* at 6. The Report stated that the EMDR therapist advised the Individual that she could not proceed with EMDR therapy because she "wanted him to be more stable" before beginning EMDR therapy. During the evaluation, the Individual told the DOE Psychologist that he had also called five or six other EMDR providers but was unable to get an appointment. *Id.* at 7. The Individual's medication management provider (provider), a certified nurse practitioner who had diagnosed him as suffering from PTSD and MDD, prescribed psychotropic medication for the Individual. *Id.* at 7–8. The provider noted in March 2021 that the Individual's depressive symptoms improved, and his other symptoms were

⁴ The LSO's Exhibits do not include a copy of the police report.

“controlled.” *Id.* She recommended that he continue taking his medication, continue counseling, and schedule a follow-up appointment in three months. *Id.* at 7.

Ultimately, the DOE Psychologist opined that the Individual’s untreated PTSD is a diagnostic condition which in his case can, and has, impaired his judgment, stability, and reliability. *Id.* at 10. She further concluded that without appropriate treatment of EMDR therapy, the Individual’s prognosis is guarded, and he remains at risk for recurrence of problem behaviors. *Id.*

V. HEARING TESTIMONY

The Individual’s relative (“relative”) testified that her niece is married to the Individual. Transcript (Tr.) at 10. The relative has known the Individual for approximately five years, visits and talks with him regularly, and has spent a lot of time with the Individual and his family, including at his home. *Id.* at 10, 19, 21, 23. The relative further testified that she has, on many occasions, witnessed the Individual’s son exhibit problematic behaviors because “he does have an attitude and a mouth, and just doesn’t hold back.” *Id.* at 16–17. She stated that when the Individual’s son and his other children are fighting, she has seen the Individual verbally intervene to request that his son and other children stop fighting or misbehaving. *Id.* When the Individual intervenes, he raises his voice in a nonviolent way, for the purpose of getting their attention. *Id.* at 22. She has also observed the Individual intervene in an intense, emotional altercation between the Individual’s son and wife without using physical force. *Id.* at 14–15. The relative asserted that she has never seen the Individual physically hurt anyone, nor has she seen him put his family in danger by his action or his judgment. *Id.* at 18.

During her testimony, the relative asserted that the Individual’s wife has never complained to her about any mistreatment from the Individual. *Id.* at 15, 22–23. The relative described the Individual as trustworthy and having good judgment and asserted that she finds him reliable based on his interactions with her and her family. *Id.* at 13, 17.

The Individual’s colleague testified that he has known the Individual for almost five years, and they work together daily. *Id.* at 27. The colleague, who was aware of the Individual’s physical altercation alleged in the SSC, testified that the Individual told him he is attending psychotherapy, although the colleague was not aware of any other details regarding his therapy sessions. *Id.* at 28, 31. He testified that other than the physical altercation alleged in the SSC, he had not heard of any other problems regarding the Individual and his family. *Id.* at 35. The colleague asserted that he has never seen the Individual lose his temper or become angry to the point of wanting to physically strike someone. *Id.* at 29–30. He described the Individual as a nice person who is talkative with a good sense of humor, and who treats everybody with respect *Id.* at 32. The colleague asserted that the Individual consistently demonstrates responsibility and provided examples of how the Individual took responsibility without shifting blame to others. *Id.* at 30–31. He asserted that the Individual is trustworthy and demonstrates good judgment at work. *Id.* at 29, 33–34, 36.

The Individual’s Therapist testified that the Individual was referred to her by his former therapist for the purpose of providing him with EMDR therapy. *Id.* at 40. The Therapist described EMDR therapy and its effectiveness for individuals who have experienced trauma. *Id.* at 41. She stated that based on her intake assessment, she diagnosed the Individual with another trauma-related

diagnosis because she concluded that he did not meet the DSM-5 criteria for PTSD.⁵ *Id.* at 42, 59–60. She testified that she has been providing psychotherapy treatment for the Individual since June 2021. *Id.* at 40. The Therapist has ongoing therapy sessions with the Individual twice per month, and she estimated she has had a total of 24 sessions with him as of the date of the hearing. *Id.* at 43, 59.

The Therapist testified that although the Individual was referred to her to receive EMDR therapy, she chose to first provide him with dialectical behavioral therapy (DBT). *Id.* at 45–46; Ex. W. She testified that DBT is specific to helping individuals who struggle with regulating their emotions. *Id.* at 46. The Therapist also testified that in her clinical practice, she usually has her clients start with DBT before doing EMDR therapy. *Id.* at 49. She stated that she initially began EMDR therapy with the Individual, however, she then determined that the Individual needed DBT before moving forward with EMDR therapy. *Id.* at 47–48, 64. Moreover, the Individual had reported to her that because he reacts immediately, he wanted to learn how to “take a step back” and assess the situation to have a better outcome in his response. *Id.* at 46. The Therapist stated that because this hearing was causing the Individual some distress, she determined that it was best to delay EMDR therapy until after the hearing. *Id.* at 48.

The Therapist testified that the Individual has been compliant with treatment and is committed to working on his mental health. *Id.* at 57. His most recent therapy session was five days before the hearing, and per his request, the Individual will be able to remain her client when the Therapist starts employment for a new employer. *Id.* at 43. The record also contains a letter by the Therapist, dated October 30, 2021, stating that the Individual has attended therapy on a regular basis, is forthcoming and accountable during therapy sessions, and will begin EMDR therapy soon. Ex. W. Regarding the Individual’s prognosis, the Therapist asserted that the Individual has implemented the skills he has been working on during therapy sessions and is progressing well, and she provided a specific example that demonstrated how he successfully implemented one of the DBT techniques to effectively handle a stressful situation with his wife and children. *Id.* at 47, 51–53. Regarding his ability to achieve effective impulse control, the Therapist opined that the Individual is improving and if he continues to attend therapy and practice what he is learning, he will continue to improve. *Id.* at 53. The Therapist also opined that the Individual has the skills to interact with his sons once he gets to resume visitation with them, and she “highly recommend[s] family therapy with his two other children.” *Id.* at 55. She asserted that the Individual is motivated to continue participating in therapy because of his desire to improve how he responds to situations with his family and daily life, and to maintain his security clearance. *Id.* at 54. The Therapist stated that once she begins doing EMDR therapy with the Individual, she hopes that it will help the Individual resolve any trauma-related issues he’s had from his past. *Id.* at 53. She testified that based on her therapy sessions with the Individual, she does not believe that he has an issue with his judgment, reliability, and trustworthiness. *Id.* at 56.

The Individual testified regarding the incident resulting in the physical altercation between him and his son. His testimony was consistent with his LOI response. *Id.* at 70–74, 91–92; Ex. 8 at 9–12. He stated that after the incident, he told his ex-wife what had happened, and she agreed to pick up their son. *Id.* at 73. After his son left, CYFD contacted the Individual that night asking him

⁵ The Therapist was unable to recall the exact trauma-related diagnosis that she specified regarding the Individual. Tr. at 42.

about the altercation and he told them what had happened. *Id.* at 74. The next day, CYFD told him that because of the investigation, his son had to remain with the Individual's ex-wife. *Id.* at 74. The Individual asserted that the shoulder and rotator cuff injury was not the arm that the Individual had grabbed. Tr. at 74. He asserted that his son had previously broken his collarbone when he was younger, and the Individual testified that he thinks that during the altercation, his son fell and used his arm to regain his balance, which caused his shoulder injury. *Id.* The Individual testified that although the abuse allegations were substantiated, it was only because there was an injury. *Id.* at 74–75. He also stated that he was never contacted by or spoke to the police about the altercation. *Id.* at 91–92.

The Individual further testified regarding the progress he has made in his mental health treatment. He stated that in his previous therapy sessions with his former therapist, he did not get to focus on his own issues because she conducted family therapy and couples therapy simultaneously with his individual therapy. *Id.* at 77. He testified that while his former therapist tried to address his issues of being reactive, she did not give him tools to use when facing situations that required him to “take a step back.” *Id.* at 79. By contrast, the Individual testified that his current DBT therapy has been very helpful because the individual therapy sessions allow him to prioritize to address his psychological issues. *Id.* at 77. He admitted that his problems with being impulsive and reactive were present even before the altercation with his son. *Id.* at 77–78. He testified that because of what he has learned in therapy with his Therapist, he is able to effectively handle situations involving his son by taking time to assess situations before reacting, and then providing more defined and direct instructions to his son which prevents ongoing arguments. *Id.* at 78. He described specific examples of techniques learned in DBT and how he applies them to make better judgments when interacting with and disciplining his children. *Id.* at 89–90. He asserted that he has also used DBT tools in daily life situations and in his marriage. His DBT tools have successfully improved his marital communication. *Id.* at 79–80. Moreover, he has been taking his psychotropic medication daily as prescribed. *Id.* at 89.

The Individual confirmed that he has had significant traumas in his life. *Id.* at 81. He testified that because of his previous traumatic experiences, he is motivated to work on his behaviors as a father and resolve his past issues so that his children will not have to live through what he has experienced. *Id.* at 81. The Individual also acknowledged that, in the past, when he communicated his feelings, this has been perceived as shifting blame to others. Now with his current therapist, he is working to address this by learning better communication techniques. *Id.* at 82.

Regarding the 2020 restraining order, the Individual admitted that he agreed to comply with the order so that his son could receive multisystemic therapy (MST) because CYFD had recommended MST in its family treatment plan. *Id.* at 84. He asserted that the restraining order prevented him from having contact with his son while his son was receiving MST therapy but later the Individual would be brought into the therapy with his son. *Id.* at 85, 93. In support of his assertions, the Individual submitted court documents which showed that his ex-wife filed a restraining order on August 30, 2020, and showed the order was in effect until November 11, 2020. Ex. E; Tr. at 83–84. Further, the Individual submitted CYFD Priority Consultation Recommendations including MST. The Individual also submitted a court order mandating that the Individual's son must continue MST counseling, and that the Individual must participate in his son's counseling service “once the counselor determines it to be in [the son's] best interest.” Ex. E; Ex. G; Tr. at 83–84.

Regarding the 2015 restraining order, the Individual admitted that the restraining order was filed as alleged in the SSC. *Id.* at 85. He asserted that the restraining order was filed within a few weeks of his ex-wife filing for divorce. He asserted that his ex-wife filed the 2015 restraining order to prevent him from seeing his children, and so she could use the order to get better financial arrangements from the Individual. *Id.* at 85–86; Ex. 8 at 9.

The DOE Psychologist testified after observing the hearing and listening to the testimony of all the witnesses. She opined that at the time of the hearing, his PTSD diagnosis remains unchanged. *Id.* at 100, 102. She further opined that EMDR therapy is evidence-based treatment that is determined to be effective in PTSD. *Id.* at 103. She concluded that the DBT and counseling that the Individual is receiving from his Therapist is “preparatory.” *Id.* at 102. The DOE Psychologist testified that she “would not disagree” with the Therapist’s determination that the Individual needed DBT before starting EMDR therapy, because EMDR therapy is an intense treatment. *Id.* She opined that the Individual has made progress in several ways including emotional regulation and decreased irritability. *Id.* at 105–06. She also stated that the prescribed medication that the Individual takes can also help with anxiety, and PTSD is an anxiety-based condition. *Id.* at 108. Regarding whether he has gained sufficient impulse control skills from his DBT and counseling sessions with his Therapist, the DOE Psychologist opined that based on the Individual’s testimony and that of his Therapist, the Individual’s treatment is “a work in progress,” but she acknowledged that the Individual has made good progress. *Id.* at 107–08. She concluded that EMDR therapy will make a more significant difference for the Individual’s progress than DBT. *Id.* at 102. She explained that EMDR therapy provides a “deeper” therapy that goes beyond applying DBT techniques and tools to emotionally reset oneself. EMDR therapy addresses the motivation and background behind traumas, so that the actual symptoms including anxiety and emotional dysregulation no longer occur. *Id.* at 103–04.

The DOE Psychologist opined that the Individual’s current prognosis is fair. *Id.* at 106. She testified that the Individual’s PTSD symptoms, which she reiterated from her Report, can affect the Individual’s reliability and his ability to make determinations based on his judgment and emotional stability. *Id.* at 104–05. She opined that it was not the Individual’s fault that he did not get EMDR treatment earlier. *Id.* at 106. She also concluded that in DBT, there is no set timeline for when DBT has reached the point of effectiveness when a person is able to manage any symptoms. *Id.* at 109–10. Accordingly, the DOE Psychologist testified that the Individual’s therapist would just have to use her best judgment to determine when the Individual might be ready for EMDR. *Id.* at 110. The DOE Psychologist opined that if the Individual begins and completes approximately three months of EMDR, then his prognosis is good. *Id.* at 106.

VI. ANALYSIS

A. Guideline I

The DOE Psychologist’s diagnosis of the Individual with PTSD, and her opinion that the Individual’s condition impairs his judgment, stability, and reliability, raises concerns under Guideline I of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 28(b). An individual may mitigate security concerns, in relevant part, under Guideline I if:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.

Adjudicative Guidelines at ¶ 29 (a)–(c).⁶

Regarding the mitigating factor set forth in ¶ 29(a), the Individual has made consistent efforts to comply with his treatment plan. He takes his daily medication as prescribed, and he credibly testified that his current DBT therapy with his Therapist is helping him address emotional regulation issues. He was also able to provide tangible examples of how he uses DBT techniques and tools in his interactions with his children and in his communication with this wife. He and the Therapist are also working together to help him obtain sufficient impulse control skills. The Individual also provided evidence, including his Therapist's testimony and her written statement, that supports his assertions regarding his progress. I also recognize that the Individual has made multiple efforts to obtain EMDR therapy for his PTSD. The Individual is consistently complying with his DBT treatment needed before beginning EMDR therapy.

Nonetheless, as the Therapist testified, and as explained by the DOE Psychologist, while DBT will assist the Individual so that he will be ready to begin EMDR therapy, he has not yet arrived at a point where he can engage in EMDR therapy. Currently, the Individual still exhibits symptoms, including unresolved issues related to impulse control, which can affect his judgment, reliability, and emotional stability. Because circumstances have not allowed the Individual to reach the point where his condition is readily controllable with treatment, I cannot find that he has mitigated the DOE's concerns under ¶ 29 (a).

Under the second mitigating factor, ¶ 29(b), the Individual has successfully shown that he voluntarily entered a counseling program for PTSD, which is a condition that is amenable to treatment. Moreover, the Therapist testified that the Individual has made significant progress in that he has demonstrated to her that he has been trying to implement the skills that he has learned in DBT. Regarding his prognosis, while the Individual's Therapist asserted that the Individual would begin EMDR therapy soon, she could not provide a favorable prognosis regarding his progress in EMDR therapy because the Individual still needs to resolve some of his emotional regulation issues and impulse control issues in DBT. To mitigate concerns under Guideline I under the second mitigating factor, the Individual needs to show a favorable prognosis for his PTSD. While he is successfully doing the preparatory work so he can begin recommended EMDR therapy, without significant advancement in EMDR therapy, he is

⁶ I find that the other listed Guideline I mitigating factors under ¶ 29(d) and (e), regarding a mental condition that is temporary or the lack of a current problem, are not applicable in this case.

currently lacking the favorable prognosis he needs to mitigate the security concerns under ¶ 29(b).

As for the third mitigating factor, ¶ 29(c), I cannot find that the opinion of the DOE Psychologist fully supports mitigation of the Individual's psychological condition. The DOE Psychologist testified that several of the Individual's PTSD symptoms can affect his judgment, reliability, and emotional stability. She recommended that the Individual complete three months of EMDR therapy to effectively resolve the concerns surrounding his PTSD. As it stands, without having started EMDR therapy, the DOE Psychologist opined that the Individual's current prognosis is fair. Thus, the Individual has not obtained a favorable prognosis that is necessary to meet the requirements under the third mitigating factor. Consequently, I do not find that the Individual has completely resolved the Guideline I security concerns.

B. Guideline J

My review of the Guideline J mitigating factors listed in the Adjudicative Guidelines (listed at ¶ 32) find none that are applicable in the present case. The criminal incident at issue in this case is recent (approximately 17 months before the hearing) and thus I do not find mitigation under ¶ 32(a) of the Adjudicative Guidelines. *See* Adjudicative Guidelines at ¶ 32(a) (so much time has elapsed since the criminal behavior happened that it is unlikely to recur). Further, the Individual has not presented sufficient evidence where I can conclude that he in fact did not commit the offense of Abuse of a Child. *See* Adjudicative Guidelines at ¶ 32(c) (no reliable evidence to support that the individual committed the offense). Lastly, regarding successful rehabilitation described in ¶ 32(d), it is apparent from the record of this case that the Individual's alleged criminal conduct is the result of his trauma-related disorder and that this disorder is still being treated and is not fully resolved.⁷ *See* Adjudicative Guidelines at ¶ 32(d) (evidence of successful rehabilitation). Considering the record before me, I cannot find that the Individual has fully mitigated the Guideline J concerns.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines I and J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the Guideline I and J security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should not be restored at this time.

⁷ I find that the mitigating factor under ¶ 32(b) Adjudicative Guidelines regarding coercion is not applicable in this case.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard Cronin
Administrative Judge
Office of Hearings and Appeals